

A.G. Contract No. KR04-0778TRN
ADOT ECS File No. JPA 03-087
Tracts No : H5118 01C
Project: STP-095-C(5)
5 Year Item No. : 12705
Section: SR 95 MP 147.28
Re-alignment of Mesquite Road

AGREEMENT
AMONG
THE STATE OF ARIZONA
AND
THE DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS
AND
THE COLORADO RIVER INDIAN TRIBES

THIS AGREEMENT is entered into the 14th of January, 2005 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), the UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS, acting by and through its Contracting Office (the "BIA") and the NATION of the COLORADO RIVER INDIAN TRIBES (the "Tribes"), acting by and through its Tribal Council.

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The Tribal Council of the Tribes is authorized to enter into this Agreement pursuant to Article VI, Section 1(a) of the Tribes' Constitution and Bylaws. The undersigned have been authorized to execute this Agreement on behalf of the Tribes.
3. The BIA is empowered by Title 23 U.S.C., Section 204 (B), (C), (D) and Section 308 (A) to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the BIA.
4. Incident to an ongoing reconstruction on SR 95 in the Parker area, the Tribes requests the State to design and construct the re-alignment of Mesquite Road at MP 147.28, hereinafter referred to as the "Project". The amount of the Project is estimated at \$39,236.67, the parties agree the State will be responsible for 70% of the actual cost and the BIA will be responsible for 30% of the actual cost of the Project. The Tribes will be responsible for the maintenance and all of the elements of the Project outside of the State's right-of-way perpetually.

NO. 27321
Filed with the Secretary of State
Date Filed: 01/14/05

Janice K. Brewer
Secretary of State

By: Victor J. Greenwald

5. The parties hereto agree and acknowledge to the following conditions: a) The estimated amounts referenced in this agreement are subject to change and can change substantially; b) All parties will perform their responsibilities consistent with the agreement and; c) Any change or modification to the Project will only occur with the mutual Agreement of the BIA, the Tribes and the State

6. Estimated costs are as follows:

Construction TRACS No. H5118 01C

Estimated State Funds @ 70%

\$27,465.67

Estimated BIA Funds @ 30%

\$11,771.00

Estimated Total Cost of the Project

\$39,236.67

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State Will:

a. Upon execution of this agreement, invoice the BIA for the estimated amount of \$11,771.00, which is 30% of the estimated costs of the Project including construction engineering and administration costs.

b. Obtain encroachment permits from the BIA, necessary for the construction of re-aligning Mesquite Road

c. Prepare design plans, specifications and such other documents and services required for construction bidding and construction. Incorporate or resolve the Tribe's review comments

d. Call for bids and award one or more construction contract(s) for the Project. Administer same and make all payments to the contractor(s). Confer with the Tribes on any Project related contract modifications. Be responsible for any design consultant and contractor claims for extra compensation due to delays or whatever reason attributable to the State

e. Upon completion of the Project, provide the BIA with a final accounting of the estimated costs, along with an invoice or reimbursement, for the difference between the estimated amount paid by the BIA and the actual costs for the Project

2. The BIA Will:

a. Be responsible for the estimated costs associated with the Project and any increases over the estimated cost of the Project. Be responsible for any contractor claims for extra compensation due to delays or whatever reason, attributable to the BIA and the Tribes

b. Upon execution of this agreement and after receipt of an invoice from the State, remit an amount of \$11,771.00 no later than March 2005 for the estimated costs of the Project.

c. Grant the State right-of-entry access outside the State right-of-way as required for construction of the Project.

d. Obtain the right-of way and Environmental Clearance and provide the State with a Construction Easement for the Project.

3. The Tribes Will:

- a. Review the design documents and provide comments.
- b. After completion and acceptance of the Project, provide for the maintenance and all of the elements of the Project outside of the State's right-of-way perpetually.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this agreement shall remain in force and effect until completion and reimbursements, provided herein. However, any provisions for maintenance outside of the State's right-of-way provided by the Tribes shall be perpetual. This agreement may be cancelled at any time by any party prior to the award of a Project construction contract, upon thirty-days (30) written notice to all parties. It is understood and agreed that, in the event the Tribes terminates this agreement, the State shall in no way be obligated to maintain said Project out side of State's right-of-way.

2. It is understood and agreed to by all parties herein, should the BIA or Tribes cancel this agreement as above written, the BIA will be responsible for all costs incurred by the State for the Project up to the time of cancellation.

3. In the event there are changes in the scope of the work, extra work, or changes in the planned work covered by this agreement, a modification to this agreement in the form of a Construction Change Order issued by the State's Resident Engineer, signed by representatives of the parties hereto is required prior to the start of work on said changes or additions.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination"

6. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. Applicable laws and regulations of the State, the Tribes and Federal Government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement, compliant with applicable laws and regulations of the State, the Tribal and the Federal government, and acceptable to the State, the Tribal and the Federal government. Such process shall include a provision for arbitration.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007

Colorado River Indian Tribes
Tribal Chairperson
Route 1 Box 23-B
Parker, AZ 85344

Bureau of Indian Affairs
Vernon Palmer
P O. Box 10
Phoenix, AZ 85001

9. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

10. Nothing in this Agreement shall be construed to effect or be deemed a waiver of immunity by any party unless specifically provided for herein.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS**

By Wayne Nordwall
REGIONAL DIRECTOR
WESTERN REGIONAL OFFICE

**STATE OF ARIZONA
Department of Transportation**

By Douglas A. Forstie
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operation

COLORADO RIVER INDIAN TRIBES

By Daniel Eddy, Jr.
DANIEL EDDY, JR
Tribal Chairman

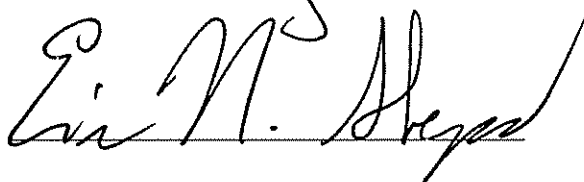
ATTEST

By Sylvia Homer
SYLVIA HOMER
Tribal Secretary

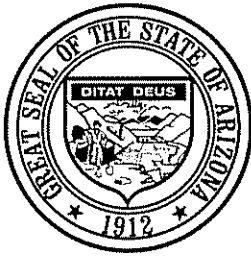
ATTORNEY APPROVAL FORM
FOR THE COLORADO RIVER INDIAN TRIBES

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the COLORADO RIVER INDIAN TRIBES, which has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declare this agreement to be in proper form and within the powers and the authority of the Tribal Council of the Colorado River Indian Tribes, granted to it under Article VI, Section 1, lit. a of the Constitution and Bylaws of the Colorado River Indian Tribes. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 6th day of August, 2004.

A handwritten signature in black ink, appearing to read "Eric M. Shepard", written over a horizontal line.

Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646

**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR04-0778TRN (**JPA 03-087**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED January 10, 2005.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General